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7 EARNEST CASSELL WOODS,  
8 Plaintiff,  
9 v.  
10 THE VETERANS ADMINISTRATION, et  
al.,  
11 Defendants.

Case No. 15-cv-05135-JD

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**ORDER DENYING PLAINTIFF'S  
MOTIONS TO PROCEED IN  
FORMA PAUPERIS**

18 Re: Dkt. Nos. 2, 5, 9

19 Plaintiff, a state prisoner, filed a pro se civil action. The Court ordered plaintiff to show  
cause why the case should not be deemed three strikes barred and the application to proceed in  
forma pauperis denied pursuant to 28 U.S.C. § 1915(g). Plaintiff does not contest that he has three  
strikes pursuant to § 1915(g). Plaintiff argues that his case should be permitted to proceed  
because he is under imminent danger of serious physical injury.

20 The plain language of the imminent danger clause in § 1915(g) indicates that “imminent  
danger” is to be assessed at the time of filing of the complaint. *See Andrews v. Cervantes*, 493  
21 F.3d 1047, 1053 (9th Cir. 2007). The court “should not make an overly detailed inquiry into  
whether the allegations qualify for the exception.” *Andrews*, 493 F.3d at 1055. It is sufficient if  
22 the complaint “makes a plausible allegation that the prisoner faced ‘imminent danger of serious  
physical injury’ at the time of filing.” *Id.*<sup>1</sup>

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25 <sup>1</sup> The Second Circuit requires that there be a nexus between the alleged imminent danger and one  
26 or more of the claims for relief asserted in the complaint. *See Pettus v. Morgenthau*, 554 F.3d  
27 293, 299 (2d Cir. 2009). In determining whether such a nexus exists, the court will consider “(1)  
whether the imminent danger of serious physical injury that a three-strikes litigant alleges is fairly  
traceable to unlawful conduct asserted in the complaint and (2) whether a favorable judicial  
outcome would redress that injury.” *Id.* at 298-99. This would appear consistent with *Andrews*  
28 *II*'s holding that, as long as there is imminent danger anywhere in the complaint, the whole  
complaint can go forward, although *Andrews II* does not explicitly state that the danger has to be

1 In this action, plaintiff argues that per his request, the Veteran's Administration is sending  
2 a portion of his disability monthly compensation to his mother, but the funds have been  
3 confiscated to pay federal fines. For relief, plaintiff seeks the full amount sent to his mom and no  
4 federal withholdings.

Plaintiff argues that he is in imminent danger due to prison officials engaging in an ongoing pattern of retaliatory punishment due to his filing of legal grievances. As a result, plaintiff has been transferred numerous times to different prisons and the transportation has resulted in injury. Plaintiff cites to exhibits concerning reflux disease from 2007 to 2011. Plaintiff's bare allegations fail to demonstrate a plausible allegation of imminent danger. His argument concerning imminent danger does not relate to any claim in the complaint or any conduct by the Veterans Administration. This is insufficient to demonstrate imminent danger.<sup>2</sup>

## CONCLUSION

13       1. Plaintiff's motions to proceed in forma pauperis (Docket Nos. 2, 5) and his motion  
14 not to be three strikes barred (Docket No. 9) are **DENIED**.

15       2. To proceed with this action, plaintiff must pay the full filing fee, four hundred  
16 dollars (\$400), within **twenty-one (21) days** of the date this order is filed or this case will be  
17 dismissed.

**IT IS SO ORDERED.**

Dated: February 17, 2016

  
JAMES DONATO  
United States District Judge

related to one of the claims for relief.

<sup>28</sup> Plaintiff made the same argument for imminent danger in *Woods v. Board of Prison Hearings*, Case No. 15-cv-05136-JD.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EARNEST CASSELL WOODS,  
Plaintiff,

V.

THE VETERANS ADMINISTRATION, et al., Defendants.

Case No. 15-cv-05135-JD

## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 17, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Earnest Cassell Woods ID: D58091  
A4-233  
P.O. Box 901  
Imperial, CA 92251

Dated: February 17, 2016

Susan Y. Soong  
Clerk, United States District Court

By: Lisa R. Clark  
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO